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PM51/0319

EXAMINER	
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ART UNIT	PAPER NUMBER
3641	14

DATE MAILED: 03/19/99

Below is a communication from the EXAMINER in charge of this application  
COMMISSIONER OF PATENTS AND TRADEMARKS

ADVISORY ACTION

☒ THE PERIOD FOR RESPONSE:

- ☐ is extended to run \_\_\_\_\_ from the date of the Final Rejection
- ☒ continues to run 3 months from the date of the Final Rejection
- ☐ expires three months from the date of the final rejection or as of the mailing date of this Advisory Action, whichever is later. In no event however, will the statutory period for response expire later than six months from the date of the final rejection.

Any extension of time must be obtained by filing a petition under 37 CFR 1.136(a), the proposed response and the appropriate fee. The date on which the response, the petition, and the fee have been filed is the date of the response and also the date for the purposes of determining the period of extension and the corresponding amount of the fee. Any extension fee pursuant to 37 CFR 1.17 will be calculated from the date that the shortened statutory period for response expires as set forth above.

☒ Appellant's Brief is due in accordance with 37 CFR 1.192(a).

☒ Applicant's response to the final rejection, filed 03/10/99, has been considered with the following affect, but it is not deemed to place the application in condition for allowance:

1. ☐ The proposed amendments to the claim and/or specification will not be entered and the final rejection stands because:
- ☐ There is no convincing showing under 37 CFR 1.116(b) why the proposed amendment is necessary and was not earlier presented.
  - ☒ They raise new issues that would require further consideration and/or search. (See Note).
  - ☐ They raise the issue of new matter. (See Note).
  - ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal.
  - ☐ They present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE: see Attachment 1

2. ☒ Newly proposed or amended claims 32 would be allowed if submitted in a separately filed amendment cancelling the non-allowable claims.

3. ☒ Upon the filing of an appeal, the proposed amendment ☐ will be ☒ will not be, entered and the status of the claims in this application would be as follows:

Allowed claims: 30-31  
Claims objected to: 2-3, 9, 18-20, and 27  
Claims rejected: 1, 4, 6-8, 17, and 25-26

However;

- a. ☐ The rejection of claims \_\_\_\_\_ on references is deemed to be overcome by applicant's response.
- b. ☐ The rejection of claims \_\_\_\_\_ on non-reference grounds only is deemed to be overcome by applicant's response.

4. ☒ The affidavit, exhibit or request for reconsideration has been considered but does not overcome the rejection.
5. ☐ The affidavit or exhibit will not be considered because applicant has not shown good and sufficient reasons why it was not earlier presented.

☐ The proposed drawing correction ☐ has ☐ has not been approved by the examiner.

☐ Other

STEPHEN M. JOHNSON  
PRIMARY EXAMINER

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Attachment 1

1) With regard to claims 1, 6, 17, and 18 (as proposed), the newly added limitations require further consideration of the applied art to determine patentability. Possible further searching may also be required.

2) With regard to claim 32, this claim is claim 27 re-written in independent form and as such would be allowable.

3) With regard to the issue of the restriction requirement of 2/9/98 (paper #5), this requirement is still proper. However, a further explanation for restriction is given as follows.

The restriction requirement of 2/9/98 restricted between figs. 1a and 1b (species A) and figs. 2a and 2b (species B). Applicant elected and has received a complete action on species B.

Applicant argues that this restriction requirement is not proper for several reasons each of which will be addressed as follows.

a) With regard to the argument that claims 17 and 25 are generic and that no distinctness between the two different species is found in either of these claims, the following explanation is given. This argument is not convincing for several reasons. Firstly, generic claims by definition are claimed in such a fashion as to encompass only features that are common to both species. Consequently distinction between the two different species would not be found in a generic claim. One would have to look to the different species claims in the application to

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demonstrate the distinctness of each species that resides in the claims (MPEP 806.01). Secondly, the argued claims 17 and 25 are not generic but rather are directed only to the elected species B (figs. 2a and 2b). Only species B detects a destructive object in the proximity to a person. Species A detects pressure waves (see pages 9 and 10 of the application as originally filed). Lastly, even if these claims were generic (which they are not), neither claim has been indicated as being allowable.

b) With regard to the argument that the MPEP has mis-interpreted 35 USC 121 in interpreting “independent **and** distinct” to be interpreted as ‘independent **or** distinct’, the following explanation is given. The MPEP gives clear support for its interpretation of the statute in this way as evidenced by the Congressional hearings prior to enactment of the Statute and court decisions thereafter (MPEP 802.01).

MPEP 802.01

“The law has long been established that dependent inventions (frequently termed related inventions) such as used for illustration above may be properly divided if they are, in fact, “distinct inventions, even though dependent”.

c) With regard to the argument that the different species are only altered with respect to the type of destructive object detected, this is clearly not the case. Firstly, the species A embodiment is designed as explosive protection system to detect and protect from the effects of a blast pressure wave (not a projectile or destructive object). Secondly, because the two different species are designed to defend against two very different threats, they have numerous distinctly

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different design features. Different sensors are used. The sensors are in different locations because each is used for a different type of threat. The airbags are located in different locations relative to both the person being protected and the structure surrounding the person. The airbags themselves have different design features because of there different locations and different associated threats. For all of the above reasons, the two different species are distinctly different. The argument directed to their not being independent is moot in view of 35 USC 121 and MPEP 802.01.

4) Any inquiry concerning this communication should be directed to Stephen M. Johnson at telephone number (703)-306-4158.



**STEPHEN M. JOHNSON**  
**PRIMARY EXAMINER**